IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.511 OF 2001

Girish Pujari @ Girish Puappa
Hosmane @ Kumbhar
Age - About 24 years,
Residing at Near Shivmandir,
Dahisar (West),
Mumbai - 400 068. **..Appellant**

Versus

The State of Maharashtra **..Respondent**

Mr.S.A.Ingawale, appointed for the Appellant.
Dr.F.R.Shaikh,Additional P.P.for the Respondent.

CORAM :- DR.S.RADHAKRISHNAN &
SMT.R.S.DALVI,JJ.
DATE : 28TH SEPTEMBER,2007

JUDGMENT (PER : DR.S.RADHAKRISHNAN,J.)

1. By this Appeal, the Appellant is challenging the judgment and order dated 3rd May,2001 passed by the learned Sessions Judge, Sindhudurg-Oros, whereby the Appellant has been convicted for the offence punishable under Section 302 and 309 of the Indian Penal Code.

2. The brief facts are, that the Appellant along with deceased Laxmi had gone to Sawantwadi on 23rd July,1999 at about 11.00 a.m. and had stayed in a hotel known as Renuka Lodging and Boarding Hotel. The Appellant had claimed that he was married to the said Laxmi and Appellant had made an entry in the register of the said lodge disclosing his name as Girish Pujari and the name of the deceased as Sou.Seema. The owner of the said Hotel Mr.Jeevansingh Purohit, after

necessary entry being made in the register had allotted Room No.106 to the Appellant and deceased Laxmi. The Appellant and the deceased Laxmi had stayed in the hotel and had moved in and around Sawantwadi Town for two days. On 25th July,1999 around 9.00 a.m., the Appellant had placed an order of two cups tea and the same was served by the servant of the lodge viz.Prakash Meghawal, to the Appellant in the room.

3. Thereafter around 6.30 p.m. when the said Prakash Meghawal was sweeping in front of the said Room No.106, he heard some noise of cracking of glass, then immediately he knocked on the door of Room No.106 and asked the inmates to open the door. However, the door was not opened. Immediately, the said Prakash Meghawal went and contacted the owner of the lodge viz.Mr.Jeevansingh, thereafter said Mr.Jeevansingh went to the hotel and when he knocked the room, there was no response. Hence, the owner Mr.Jeevansingh got suspicious and went towards the sajja of the window and peeped inside the room and he found a lady was lying on bed and the Appellant was busy in causing self inflicted wounds on himself. Immediately, said Jeevansingh rushed to the Police Station at Sawantwadi and reported the matter and the Police, after recording the same rushed to the lodge and the Police gave a loud knock. The Appellant after some time opened the door and he was trembling and was holding a

piece of glass. It appears that he was also bleeding and there were blood stains on his shirt and the lady was found dead on the bed and she was also having bleeding injuries. The Appellant was immediately taken to the hospital by the Police. There were blood stains on the garments of the lady as well as on the bed-sheet, pillow and there were glass pieces.

4. On the basis of information given by the said lodge owner Mr.Jeevansingh, FIR was registered. Thereafter the Police had prepared a spot panchanama and inquest panchanama and the dead body was removed for post-mortem. Accordingly, the post-mortem was conducted.

5. The Appellant was first taken to Government Dispensary, Sawantwadi and thereafter shifted to the hospital at Bamboolim-Goa for medical treatment. While conducting the post-mortem on the body of Laxmi, the Doctor found contused lacerated wound on the right hand wrist joint including radial artery cut having measurement 4" x 1/2" muscle depth. He also found another lacerated wound having measurement 5" x 1/2" skin depth and another injury in the Ipigestric region having 3" x 1" depth and five punch holes in between two breasts over sternum, 1" depth, and he had opined that all these injuries were caused by sharp edged weapon and the cause of death was cardio respiratory arrest due to hypo volume haemorrhagic shock due to

multiple injuries. The Doctor who had conducted the post-mortem viz.Dr.Dnyaneshwar Arjun Aivale had clearly opined in his evidence that all the above injuries were found on the front side of the body and that all the injuries may be self-inflicted.

6. The Appellant was also treated by Dr.Madhu Mohanprabhu Desai who was from Goa Medical College, Bamboolim and she found multiple stab injuries on anterior abdominal wall having 2" x 3" above umbilicus in midline penetrating the peritoneum. In her evidence she had stated that the Appellant's peritoneum was open but no internal organ was injured. It was also found that the Appellant had consumed baygon poison. Ultimately, after full treatment, the Appellant was discharged on 30th July,1999.

7. The Investigating Officer, as per the Identity-Card of the Appellant, had contacted Borivali Police Station from where he came to know that the deceased was missing from that area and finally from the description, he was able to trace the husband of the deceased. One Surendra Gupta came to Sawantwadi on 27th July,1999 and had identified the dead body of Laxmi as that of his wife. The said Surendra Gupta had handed over a chit to the Police being a note written by the deceased Laxmi before leaving her husband's residence. The said note clearly indicates that she was very apologetic for leaving the house of

her husband and in the said note, she has repeatedly stated that she was not desirous of living and that she does not deserve to live and she had apologised to her husband in the said note.

8. The Police while apprehending the Appellant in the lodge, found a suicide note left by the Appellant, wherein it is clearly mentioned that both of them are committing suicide and no one should be held responsible for the same and the hotel should not be put into any difficulty and also that he had given his wrong address to the hotel.

9. The Appellant was charged for the offence punishable under Section 302 of the Indian Penal Code for causing murder of the said Laxmi and also for the offence punishable Under Section 309 of the Indian Penal Code for attempting to commit suicide whereby he caused severe self-inflicted wounds on his stomach.

10. The prosecution had examined in all nine witnesses in support of the prosecution case. The learned Sessions Judge, after appreciating the evidence and the material on record found the Appellant to be guilty for the offence of murder under Section 302 of the Indian Penal Code and was sentenced to suffer life imprisonment for causing murder of Laxmi and also for the offence punishable under Section 309 of the Indian Penal Code and was sentenced

to suffer simple imprisonment for a period of six months.

11. The learned Counsel appearing on behalf of the Appellant Mr.Ingawale pointed out that in the above, there are no eye witnesses at all with regard to the death of Laxmi. He pointed out that both the Appellant as well as the deceased Laxmi had left written notes, which clearly indicate that both of them were desirous to end their lives. The note left by deceased Laxmi also shows that she on her own accord had left the house of her husband and had accompanied the Appellant and both of them stayed in the said lodge for two days and on the third day they both appeared to have planned to commit suicide. The contention of Mr.Ingawale is that even the evidence of the servant of the lodge Prakash Meghawal clearly indicates that on 25th July,1999, when he was sweeping outside Room No.106, he heard the noise of glass braking and he immediately knocked the door but there was no response. Mr.Ingawale pointed out that the said servant Mr.Prakash Meghawal did not hear any shout or screaming of the deceased Laxmi, in the sense, if the Appellant had assaulted the deceased Laxmi, then there would have been some screaming or shouting on the part of the deceased Laxmi. Over and above, Mr.Ingawale pointed out that when the owner of the lodge Mr.Jeevansingh came and peeped into the room through the sajja of the window, he found that the

deceased Laxmi was lying down on the bed and the Appellant was busy in inflicting self-injuries on himself and when the Police came the Appellant opened the door, he had caused several self-inflicted injuries on the stomach specially on the front side area and he was holding glass piece in his hand and he had also consumed Baygon poison.

12. Mr.Ingawale also stressed that the Doctor who had conducted the post-mortem on deceased Laxmi had categorically opined that the injuries caused on her may be self-inflicted. To put it in other words, the injuries on deceased Laxmi could have been self-inflicted and the same was not ruled out. Under the aforesaid facts and circumstances of the case, Mr.Ingawale, the learned Counsel for the Appellant pointed out that in the above case, there are no eye witnesses with regard to any assault on deceased Laxmi, and there is no evidence or material contradicting the probability of deceased Laxmi committing suicide and that the Appellant also was attempting to commit suicide and if that be so, Mr.Ingawale submitted that the Appellant ought to be given benefit of doubt and he ought not to have been convicted.

13. Mr.Ingawale also referred to the evidence of husband of deceased Laxmi, Mr.Surendra Gupta who had also stated that his wife had left his residence on

22nd July,1999 in the afternoon and she did not return back. Accordingly, on 23rd July,1999, he had given verbal complaint and thereafter lodged a missing report on 24th July,1999 at Borivali Police Station.

14. On 26th July,1999 Mr.Surendra Gupta husband of deceased Laxmi was informed about the murder of Laxmi, thereafter he had rushed to the Sawantwadi and had identified the dead body of his wife Laxmi. He had also stated that when he went to the Sawantwadi, he had handed over the aforesaid letter written by Laxmi, wherein she had clearly expressed her desire to put an end to her life.

15. Mr.Ingawale, taking into account all the aforesaid facts pointed out that in the above, it is apparent that the Appellant and deceased Laxmi who were very close to each other had planned to end their lives and prior to that decided to spend a couple of days at Sawantwadi. In the whole process, the deceased Laxmi had succeeded in committing suicide whereas the Appellant, while attempting the same did not succeed. In view thereof, Mr.Ingawale submitted that the Appellant ought not to have been found guilty of the offence punishable under Section 302 of the Indian Penal Code with regard to causing death of Laxmi. Mr.Ingavale pointed out that all the facts and circumstances are clearly indicative that Laxmi had committed suicide.

16. Dr.Shaikh, the learned Additional P.P. appearing on behalf of the State sought to justify the judgment of the learned Sessions Judge and contended that the Appellant in his statement under Section 313 of the Code of Criminal Procedure had taken a plea that he was not aware as to why deceased Laxmi had received bleeding injuries and that the Appellant was taken to hospital by some one else and he was unconscious when the Police rushed to him. Dr.Shaikh, the learned Additional P.P.sought to contend that the reasoning adopted by the Sessions Judge was right and as such the Appellant ought to be held guilty of both the offences punishable under Section 302 and 309 of the Indian Penal Code.

17. After having heard both the learned Counsel for the Appellant and the learned Additional P.P. for the State and after perusal of the material evidence on record and also the learned Trial Court judgment, the following facts are clear.

i) The Appellant and the deceased Laxmi had left notes which clearly indicate that they were desirous of ending their lives.

ii) No clear motive has been established so as to implicate the Appellant in the above.

iii) There are no eye witnesses who had witnessed as to how the injuries have been caused to deceased Laxmi.

iv) The injuries caused to the deceased Laxmi appear to be caused by glass pieces and it is pertinent to note that the injuries on the wrist of Laxmi cutting radial artery leading to severe bleeding and punch holes

with glass pieces on the chest.

v) An important aspect to be noted here is that if the Appellant had sought to inflict injuries on the deceased Laxmi then there would have been screaming and shouting by deceased Laxmi, which were never heard, which supports the theory of Laxmi committing suicide. The servant boy heard the noise of only glass breaking and no shouts and screams were heard.

vi) The Doctor who conducted post-mortem on the Laxmi, has clearly opined that the injuries caused on her may be self inflicted.

vii) When Mr.Jeevansing Purohit had peeped inside the room through sajja of the window, he saw deceased Laxmi was already lying down and the Appellant was busy in inflicting injuries on himself.

viii) When the Police came and knocked the door and when the Appellant opened the door, he had suffered injuries on his stomach and he was holding a glass piece in his hand and in the meanwhile he had also consumed Baygon poison.

ix) If the Accused had caused the death of Laxmi, he would have attempted it at night and escaped.

x) Even after the door was knocked by servant and till Police came, Accused had not escaped at all.

18. The statement of the Accused under Section 313 of the Code of Criminal Procedure, that he was not aware as to how injuries on Laxmi were caused, cannot be used against him.

19. From all the aforesaid facts and circumstances of the case, we cannot say that the Prosecution has established the case of murder under Section 302 of the Indian Penal Code against the Appellant beyond reasonable doubt. We are inclined to grant the

benefit of reasonable doubt to the Accused.

20. Hence, we acquit the Appellant with regard to offence punishable under Section 302 of the Indian Penal Code. However, we find him guilty of the offence punishable under Section 309 of the Indian Penal Code i.e. attempting to commit suicide.

21. Having regard to the aforesaid facts and circumstances of the case, the Appeal is partly allowed and the conviction against the Appellant with regard to the offence punishable under Section 302 of the Indian Penal Code is set aside and the Appellant be set at liberty forthwith, unless he is required in any other case.

22. The Appellant has been convicted for the offence punishable under Section 309 of the Indian Penal Code and had been sentenced to suffer simple imprisonment for a period of six months, which he has already undergone and he was also sentenced to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one month, which imprisonment also he has already undergone.

(SMT.R.S.DALVI,J.) **(DR.S.RADHAKRISHNAN,J.)**